

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CRIMINAL NO. 2:08CR11

UNITED STATES OF AMERICA

vs.

KEITH MARTINEZ

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ORDER

THIS MATTER is before the Court on Defendant's motion to enlarge the time in which to file notice of appeal, filed by counsel on March 30, 2009, and Defendant's *pro se* Notice of Appeal, filed March 16, 2009.

The Rules of Appellate Procedure provide that in a criminal case, [u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed [by this Rule].

Fed. R. App. P. 4(b)(4).

On February 12, 2009, this Court sentenced the Defendant to a term of 40 months imprisonment. **See Judgment in a Criminal Case, filed February 20, 2009.** A notice of appeal from that Judgment was due to be

filed on or before March 6, 2009.¹ Therefore, Defendant's *pro se* notice of appeal filed March 16, 2009, is untimely.

Counsel advises that the Defendant was unable to contact his previous attorney after the sentencing hearing to advise he wished to file an appeal. Additionally, counsel also states that the Defendant has a limited education and his reading and writing skills are likewise limited. For the reasons stated in the motion, the Court finds the Defendant has shown excusable neglect for the late filing of the appeal and the time for doing so shall be extended.

IT IS, THEREFORE, ORDERED that the Defendant's motion to extend time for filing appeal is **ALLOWED**, and the time for filing an appeal is extended for 30 days from March 6, 2009.

Signed: March 30, 2009



Lacy H. Thornburg
United States District Judge



¹ See Fed. R. Crim. P. 45(a)(2) ("Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.").